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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,	C065903
Plaintiff and Respondent,	(Super. Ct. No. 10F01822)
v.	
FLOYD WILLIAMS,	
Defendant and Appellant.	

Following a jury trial, defendant Floyd Williams was convicted of robbery (Pen. Code, § 211)¹ with an enhancement for personal use of a firearm (§ 12022.53, subd. (b)). The trial court sentenced defendant to a 13-year prison term.

On appeal, defendant contends there is insufficient evidence identifying him as the robber.

We affirm.

¹ Undesignated statutory references are to the Penal Code.

FACTUAL AND PROCEDURAL BACKGROUND

On January 21, 2010, around 10:30 p.m., Rico Melendez walked to the front of his apartment building to meet his wife, who was coming home from school. It was raining, so Melendez stayed under a concrete slab in front of the doorway. The front of the building was well lit, and Melendez had no problem seeing in the area where he was standing.

Melendez noticed two men jogging across a play structure in front of his apartment complex. The two men reached the other side of the complex and signaled for two other men to come across from the parking structure. Melendez watched as the second two men crossed the play area. The two men noticed Melendez by the time they got to the middle of the play area. One man made a remark to the other, they stopped, turned around, and walked toward Melendez.

One of the men was defendant. He approached to about four feet from Melendez and nodded at him. Melendez nodded back and looked to the second man, who was also coming toward him. Melendez then glanced at defendant, who was holding a gun to Melendez's face.

Defendant told Melendez to give him everything or he would be shot in the face. Melendez asked if defendant was serious, and defendant replied, "What the fuck do you think?" Melendez had his keys in his hand and offered to give them to defendant, but was turned down. Defendant told Melendez to turn around. After Melendez complied, defendant or his companion removed Melendez's wallet. The two men then left the scene.

According to Melendez, defendant's gun was a big chrome revolver with a rubber grip, and was a little over a foot long. Melendez researched the gun after the incident, and believed it was either a .40-caliber or a .357 magnum.

Melendez testified that he called the police after he went back to his house, and talked to a deputy about the incident later that night. According to Melendez, he told the deputy that the man who held a gun on him was African-American, between five feet eight inches and six feet tall, and that he had big lips, a big nose and thick eyebrows, and wore a charcoal grey hooded sweater with tie-down pockets in front, black pants and black shoes. Defendant's hood was not up when he approached Melendez. Melendez testified that he got a "good look" at defendant before defendant pointed the gun at his face. At that point, defendant lifted his sweater sleeve in front of his mouth.

Sacramento County Sheriff's Deputy Alexander McCamy responded to the robbery call and interviewed Melendez that night. Melendez appeared shaken but calm. It was obvious to Deputy McCamy that Melendez had experienced a traumatic incident. Melendez described the perpetrator as being an African-American male who was between 18 and 25 years old. He had no facial hair, and wore a grey sweatshirt with black pants or jeans and boots. He did not know the assailant's height, but recalled that he had a medium build and a short afro. The man covered his face with his hand when he talked to Melendez. Melendez did not mention the suspect's nose, lips or eyebrows.

Deputy McCamy gave Melendez contact information, but McCamy never heard from Melendez.

Melendez testified that he saw defendant several times after the robbery. The first incident happened two to three days after the robbery, when Melendez was driving his car into the apartment's parking structure. He saw defendant and another man pointing in the direction of Melendez's residence. Defendant and the other man then looked into the complex, turned around, and saw Melendez. Defendant then tapped the other man and started pointing at Melendez. Melendez heard defendant say, "There he goes right there." Defendant made a scene as if Melendez had done something to him. Defendant then covered his face with his sleeve and walked around Melendez's truck in a backward motion, saying things Melendez could not understand. Defendant then left the scene and Melendez went home.

The next encounter happened a day or two later, between 10:00 and 11:00 a.m., when Melendez was returning home after taking his youngest daughter to school. Melendez made eye contact with defendant, who talked a lot while covering his mouth and face. Melendez believed he saw defendant one or two more times after this incident. He called the police at least twice, and someone called the police on his behalf.

Sacramento Sheriff's Detective Mike French testified that he called Melendez on March 11, 2010. Detective French told Melendez that if he saw the robber again to try to get other information associated with the robber, such as an address or a vehicle with which the robber was associated.

On March 15, 2010, Detective French met with Melendez. Melendez told Detective French that he had seen defendant three times since the robbery, most recently on March 12. Detective French testified that Melendez gave a description of the robber that was similar but more exact than the one in the police report. Melendez narrowed the robber's age and said he had a broad nose and large lips. Melendez also provided Detective French with the location and license plate number of a blue van with oversized tires that was associated with defendant.

Detective French and his partner drove to the street identified by Melendez and found the blue van with the license plate number Melendez had given French. French later followed the van in an unmarked department vehicle. At one point, Detective French came up behind the van and activated his vehicle's red lights and siren. The van did not immediately stop; it kept driving for approximately a mile until it parked at an apartment complex. Detective French pulled up behind the van, got out of his vehicle, drew his weapon, and ordered the driver to put his hands outside of the car. The driver complied. However, a passenger got out of the van, made eye contact with Detective French, and then fled. Based on his investigation at the scene of the stop, Detective French determined that defendant was a possible suspect.

Detective French researched a police database using defendant's name and found a photograph of defendant. Upon seeing the photograph, Detective French recognized defendant as the person he saw flee from the van. French also realized

he had had previous contact with defendant regarding an unrelated matter on March 9, 2010. Detective French created a photographic lineup containing defendant's photograph.

On March 16, 2010, Detective French showed Melendez the photographic lineup containing defendant's photograph and another lineup containing the photograph of a second suspect. After about 15 seconds of viewing the lineup containing defendant's photo, Melendez identified defendant as the robber who had been armed with the gun.²

On March 19, 2010, Sacramento Police Officer John Bell was on motorcycle patrol when he saw defendant riding a bike; he was traveling the wrong way down the number two lane of Mack Road, a major thoroughfare. With the intent of issuing a citation, Officer Bell activated his emergency lights, moved in front of defendant and drove toward him. Defendant did not stop. When defendant was about 20 feet from Officer Bell, defendant veered away to the right into the number one lane of Mack Road. Officer Bell countered by moving into the number one lane. Defendant veered back to the left and Officer Bell again mirrored defendant's movement. Using his public address system, Officer Bell ordered defendant to stop. Defendant rode over the center median to the other side of Mack Road. Officer

² Detective French testified that he had received information about a person named M.S. Although French had no information suggesting that M.S. was the person who had robbed Melendez, French wanted to let Melendez view M.S.'s photograph so that he could be ruled out. Melendez did not identify M.S. as having been involved in the robbery.

Bell activated his siren, made a U-turn and followed defendant into an apartment complex where defendant left the bike and fled on foot. Thereafter, defendant was detained by other officers.

Dr. Mitchell Eisen testified for the defense as an expert witness on the impact of stress and trauma on memory and suggestibility. He discussed the difficulty that stress and trauma can create for people in recalling the details of an event, cross-racial identification issues, how people will be more confident of their memory over time, even if they are wrong, and how a person's memory can be influenced by postevent information, such as seeing a person they believe to be a suspect. He stated that witness confidence is not a very good indicator the accuracy of an identification.

Defendant testified that he did not rob Melendez. He maintained that he was most likely at his sister's house on Mack Road on the evening of the robbery. He was familiar with the area around where the robbery took place, and would go over there to visit friends. In 2010, he probably visited that neighborhood every day in January and February. He admitted a prior conviction for a felony theft crime. Defendant testified that he knew nothing about the Melendez robbery. He also said he had never seen Melendez in the neighborhood, never saw him driving by, never pointed at him and never talked to him.

Defendant testified that he ran from the police when the van was pulled over because he said nobody was around and he was scared, as the police had no reason to stop them. He knew of a mentally ill person who had been shot by the police. He

explained, "if it is not hella people around, if it is not an audience of people and the police get behind me or stop me, I'm not stopping. I'm fitting to run, you hear me, off the top. [¶] It don't matter if I'm 40, 80. I'm going to keep it moving. I'm not stopping, straight up. That's how I feel." He testified that on the occasion when he was riding his bike, he did not stop for the police because he was the only one on the street. "If I'm the only person on the street, he can do whatever." Defendant ran into the apartment complex, got in a crowd of people and stopped. On cross-examination, defendant admitted it was early afternoon on the occasion when he fled from the van and the other two people in the van did not flee. The area consisted of residences and the apartment complex. He also admitted that Mack Road, where he fled from the motorcycle officer, is a very busy street.

DISCUSSION

Defendant contends there is insufficient evidence that he was the person who committed the crime to support his conviction. We disagree.

"To determine sufficiency of the evidence, we must inquire whether a rational trier of fact could find defendant guilty beyond a reasonable doubt. In this process we must view the evidence in the light most favorable to the judgment and presume in favor of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. To be sufficient, evidence of each of the essential elements of the crime must be substantial and we must resolve the question of

sufficiency in light of the record as a whole.” (*People v. Johnson* (1993) 6 Cal.4th 1, 38; see *Jackson v. Virginia* (1979) 443 U.S. 307, 317-320 [61 L.Ed.2d 560].)

Defendant asserts Melendez’s in-trial identification of him as the perpetrator was tainted because it was like an allegedly improper one-person “show-up” identification. The authorities cited by defendant are inapplicable because they address unnecessarily suggestive pretrial identification procedures and the impact of such procedures on in-court identifications. There is no authority for prohibiting an in-court identification in the absence of an unnecessarily suggestive out-of-court identification procedure conducted by law enforcement. And defendant does not challenge the photographic identification here. To avoid misidentification in court, defendant’s remedy was to request an *Evans* lineup. (*Evans v. Superior Court* (1974) 11 Cal.3d 617.) That did not happen here.

There was nothing improper about the in-court identification in this case. Indeed, rather than asking if defendant was the person who held a gun on him, the prosecutor asked Melendez if the person who came up to him was in the courtroom that day. Melendez’s answer, defendant, was not the product of improperly suggestive procedure.

Defendant’s central argument is that the evidence is insufficient to establish that he is the robber because Melendez misidentified him before the trial. Defendant argues that nothing ties him to the crime other than his frequenting the

area. Recognizing Melendez identified him as the perpetrator in a photographic lineup before the trial, defendant asserts his testimony was "severely impeached," in particular Melendez's statements regarding defendant returning to the scene, defendant reacting with terror to Melendez's presence, and Melendez reporting the subsequent encounters to the police.

Regarding Melendez's testimony that defendant returned to the scene, defendant argues "it is a faintly ludicrous scenario for [defendant] to return again and again, for [defendant] to see his victim, each time shrinking back covering his face with his sleeve, like a villain in a melodrama." He further reasons that it is "inherently improbable" that a person in that situation "would not persistently call police until they came to the scene to look for the suspect." Since the officers in this case reported that Melendez never called them, defendant concludes that the confrontations never could have happened, and Melendez was "revising history to incorporate convincing details nailing [defendant]."

"The testimony of a single witness is sufficient to uphold a judgment even if it is contradicted by other evidence, inconsistent or false as to other portions. [Citations.]" (*In re Frederick G.* (1979) 96 Cal.App.3d 353, 366.) In deciding whether substantial evidence supports the trial court's findings, we do not evaluate the credibility of witnesses; that is within the provenance of the trier of fact. (*People v. Breverman* (1998) 19 Cal.4th 142, 162.) "[U]nless the testimony is physically impossible or inherently improbable,

testimony of a single witness is sufficient to support a conviction. [Citation.]” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

We decline defendant’s invitation to reweigh Melendez’s credibility. Melendez immediately reported the crime to the police. He was interviewed soon afterward and described the perpetrator and his weapon in some detail. When he was interviewed a second time nearly two months later, he gave a similar, albeit more detailed, description. There is no evidence that his description was inconsistent with defendant’s appearance. Melendez saw defendant several times after the robbery, identified defendant in a photographic lineup and later identified defendant at trial. Defendant fled from the police twice after the robbery, and his explanation for doing so could have been viewed as unconvincing.

Moreover, the notion that defendant committed the robbery and continued to frequent the area is not at all far-fetched. A reasonable jury could have concluded from the evidence that defendant’s postrobbery encounters with Melendez were designed to intimidate Melendez into not reporting the robbery, a far too common strategy employed by people who commit crimes in neighborhoods in which they reside or frequent. During one of these encounters, in an act of what could be viewed as harassment or intimidation, defendant, in effect, identified Melendez, saying “There he goes right there.” Against Melendez’s testimony about these encounters was defendant’s flat denial that any such encounters occurred. The jury obviously

made a credibility determination and believed Melendez, not defendant. This was a credibility determination the jury was entitled to make.

There was more than enough evidence to support defendant's conviction.

DISPOSITION

The judgment is affirmed.

MURRAY, J.

We concur:

BLEASE, Acting P. J.

ROBIE, J.